IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND **APPEAL NO. 275 OF 2002**

Ganapati Babu Chougule,
deceased by his legal heirs -
a) Shivaji Ganpati Chougule & Ors. ..Appellants.

Versus

Tataba Vithoba Chougule & Ors. ..Respondents.

Shri S.M. Kamble for the Appellants.

Shri S.R. Page for Respondent No.1.

CORAM : D. G. DESHPANDE,J.

DATE : 23rd JUNE, 2005

P.C. :

. Heard Advocate for the Appellants and the Respondents. The appellant is the original defendant. Initially suit came to be filed for injunction on the basis that the plaintiffs have purchased the suit property by registered sale deed dated 7th September, 1976 and accordingly the plaintiffs were placed in possession of the suit property. The appellant defendant has other properties to the Southern side of the suit property of the plaintiffs. They are separately numbered. But during the absence of the

plaintiff, the defendant forcibly and illegally made a hole in the common wall and took the possession of the portion of the suit property owned by the plaintiff. The injunction was sought to restrain the defendants. The plaintiff immediately applied for appointment of the commissioner because of the apprehension in the aforesaid background. The commissioner made note on the spot and both the courts below concurrently held that the it was the appellant defendant who made a hole to the common wall and took forcible possession. Both the courts below gave a clear-cut finding against the appellant defendant. There is nothing wrong in appreciation of the evidence. There is no perversity in the conclusions arrived at by the courts below. The defendant is found to be a rank trespasser. His story that he is the tenant of one room when he has his own property adjoining the suit property of the plaintiff, was rightly discarded by both the courts below. There is no merit in the appeal. The appeal is dismissed. Stay is vacated.

23.06.2005 (D.G. DESHPANDE,J.)

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